

REFERENCE TITLE: contractors; indemnity agreements

State of Arizona  
House of Representatives  
Forty-seventh Legislature  
Second Regular Session  
2006

## **HB 2443**

Introduced by  
Representative Reagan: Senator Verschoor

AN ACT

AMENDING SECTION 32-1159, ARIZONA REVISED STATUTES; RELATING TO CONTRACTORS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:  
2 Section 1. Section 32-1159, Arizona Revised Statutes, is amended to  
3 read:

4       32-1159. Indemnity agreements in construction and  
5       architect-engineer contracts void: definitions

6       A. A covenant, clause or understanding in, collateral to or affecting  
7       a construction contract or architect-engineer professional service contract  
8       that purports to INSURE, TO indemnify, to hold harmless or to defend the  
9       promisee from or against liability for loss or damage ~~resulting from the sole~~  
10      ~~negligence of the promisee or the promisee's agents, employees or indemnitee~~  
11      is against the public policy of this state and is void TO THE EXTENT THAT IT  
12      PURPORTS TO INSURE, TO INDEMNIFY, TO HOLD HARMLESS OR TO DEFEND THE PROMISEE  
13      FROM OR AGAINST LIABILITY FOR LOSS OR DAMAGE RESULTING FROM THE NEGLIGENCE OF  
14      THE PROMISEE OR THE PROMISEE'S INDEMNITEES, EMPLOYEES, SUBCONTRACTORS,  
15      CONSULTANTS OR AGENTS, OTHER THAN THE PROMISOR.

16       B. Notwithstanding subsection A OF THIS SECTION, a contractor who is  
17       responsible for the performance of a construction contract may fully  
18       indemnify a person for whose account the construction contract is not being  
19       performed and who, as an accommodation, enters into an agreement with the  
20       contractor that permits the contractor to enter on or adjacent to its  
21       property to perform the construction contract for others.

22       C. This section applies to all CONSTRUCTION contracts AND  
23       ARCHITECT-ENGINEER PROFESSIONAL SERVICE CONTRACTS entered into between  
24       private parties. This section does not apply to:

25           1. Agreements to which this state or a political subdivision of this  
26       state is a party, including intergovernmental agreements and agreements  
27       governed by sections 34-226 and 41-2586.

28           2. Agreements entered into by agricultural improvement districts under  
29       title 48, chapter 17.

30           3. AGREEMENTS FOR INDEMNIFICATION OF A SURETY ON A BOND BY ITS  
31       PRINCIPAL OR INDEMNITORS.

32           4. AGREEMENTS BETWEEN AN INSURER UNDER AN INSURANCE POLICY OR CONTRACT  
33       AND ITS NAMED INSUREDS.

34           5. AGREEMENTS BETWEEN AN INSURER AND ITS INSUREDS UNDER A SINGLE  
35       INSURANCE POLICY OR CONTRACT FOR A DEFINED PROJECT OR WORKPLACE, EXCEPT THAT  
36       SUCH AGREEMENTS SHALL NOT REQUIRE OR PERMIT ONE OR MORE INSUREDS UNDER THOSE  
37       AGREEMENTS TO INDEMNIFY, TO HOLD HARMLESS OR TO DEFEND ANY OTHER INSURED  
38       UNDER THOSE AGREEMENTS BEYOND THE LIMITATIONS OF SUBSECTIONS A AND B OF THIS  
39       SECTION AND THE INSURER SHALL NOT BE EXCUSED FROM ITS DUTY UNDER THOSE  
40       AGREEMENTS TO DEFEND, INDEMNIFY AND PAY ON BEHALF OF ITS INSUREDS.

41       D. In FOR THE PURPOSES OF this section:

42           1. "Architect-engineer professional service contract" means a written  
43       or oral agreement relating to the SURVEY, design, design-build, construction  
44       administration, study, evaluation or other professional services furnished in  
45       connection with any actual or proposed construction, alteration, repair,

1 maintenance, moving, demolition or excavation of any structure, street or  
2 roadway, appurtenance or other development or improvement to land.

3       2. "Construction contract" means a written or oral agreement relating  
4 to the **ACTUAL OR PROPOSED** construction, alteration, repair, maintenance,  
5 moving, demolition or excavation **OF ANY STRUCTURE, STREET OR ROADWAY,**  
6 **APPURtenANCE** or other development or improvement to land **BUT DOES NOT INCLUDE**  
7 **A CONTRACT, SUBCONTRACT OR AGREEMENT THAT CONCERNS OR AFFECTS PROPERTY OWNED**  
8 **OR OPERATED BY A RAILROAD.**

9           Sec. 2. Effective date

10          This act is effective from and after December 31, 2007.